



The Comptroller General  
of the United States

Washington, D.C. 20548

*zelkowitz*

## Decision

**Matter of:** Industrial Compressor Services, Inc.  
**File:** B-232029.2  
**Date:** March 15, 1989

### DIGEST

1. Protester's contention that agency improperly found its technical proposal to be marginal in areas of management and operations is denied where record shows that agency reasonably was concerned that the protester's proposal concentrated too many tasks under the project manager, and that the proposal lacked detail in its operation plan, leading to determination that proposal was deficient in these areas.
2. General Accounting Office will not attribute bias to an evaluation panel simply on the basis of inference or supposition.
3. Where contracting officer determined prospective awardee responsible based on a review of all available evidence pertaining to the firm's integrity, including information compiled during an ongoing investigation into possible wrongdoing on the part of the firm during performance of predecessor contract, and there is no showing that the determination was made in bad faith, there is no basis to object to the agency's affirmative determination of responsibility.

### DECISION

Industrial Compressor Services, Inc. (ICS), protests the Department of the Air Force's award of a contract for maintenance services to Compressor Technician, Inc. (CTI), the incumbent contractor, under request for proposals (RFP) No. F41650-87-R-0365. ICS disputes the Air Force's evaluation of its proposal, questions the impartiality of members of the technical evaluation panel, and challenges the Air Force's affirmative determination of CTI's responsibility to perform the requested services.

We deny the protest.

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The solicitation, set aside for small business concerns, requested offers for the operation and maintenance of air compressors at Kelly Air Force Base, Texas, and generally provided that award would be made to the firm whose proposal was considered most advantageous to the government, price and other factors considered. The evaluation factors, in descending order of importance, were as follows: (1) management; (2) operations; (3) quality; (4) safety; and (5) price. Although not disclosed in the solicitation, for each of these factors, offerors were to be given an adjectival rating of exceptional, acceptable, marginal or unacceptable.

Three firms responded to the solicitation. A technical evaluation panel evaluated and scored initial proposals for technical merit and determined that all three proposals were either acceptable or susceptible of being made acceptable. The contracting officer only requested best and final offers (BAFOs) from ICS and the third firm (whose proposal is not at issue here), however, since, based on a Federal Bureau of Investigation (FBI) and Air Force Office of Special Investigations (AFOSI) interim joint investigative report concerning CTI's performance under the predecessor contract, the contracting officer found CTI nonresponsible on the basis of questionable integrity. Consequently, he immediately excluded CTI from the competition and, as CTI is a small business, referred this matter to the Small Business Administration (SBA) for a final responsibility determination under the certificate of competency (COC) procedures.

Before the scheduled due date for submission of BAFOs from the other two offerors, the Air Force concluded that the elimination of CTI at this juncture for reasons of non-responsibility, and the subsequent referral of this matter to the SBA, had been premature and thus improper. The Air Force then withdrew the determination of nonresponsibility and reinstated CTI in the competition. At the same time, since there had been allegations of conflicts of interests on the part of members of the evaluation panel, the Air Force decided to empanel a new evaluation team to reevaluate initial proposals. Based on the findings of this second panel, the contracting officer included all three offerors in the competitive range.

Discussions were held with each of the offerors concerning deficiencies noted in their initial proposals, and each was requested to submit a BAFO. The evaluation panel then conducted a final rating and ranking of the BAFOs for each of the four evaluation factors and for price. CTI's

proposal was found acceptable with respect to each of the four factors and hence received an overall rating of acceptable. ICS, on the other hand, received an overall technical rating of marginal based on its marginal rating for the two most important evaluation factors, management and operations, and an acceptable rating for the other two, quality and safety. Additionally, CTI's evaluated price was \$8,858,057, compared to ICS's evaluated price of \$6,654,636. On the basis of these technical ratings and prices, the contracting officer found CTI's proposal to be the most advantageous to the government, technical merit and price considered. The contracting officer then reexamined CTI with respect to corporate integrity and, based on the evidence now available, found CTI responsible in all respects. Award was made to CTI shortly thereafter.

Following the award, the Air Force debriefed ICS as to the reasons its proposal received only a marginal rating in the areas of management and operations. With respect to management approach, the Air Force noted that ICS gave excessive responsibility to its program manager. Additionally, the Air Force explained that, although the firm's quality assurance procedures were considered very strong, many other aspects of ICS' proposed operation plan were poorly defined; work schedules and assignments were not adequately identified, the total system preventive maintenance plan lacked sufficient detail, and the material cost control procedures were inadequate. ICS' protest to our Office was timely filed shortly after this debriefing.

ICS challenges the evaluation of its BAFO with respect to the management and operations evaluation factors. First, ICS contends that its proposal set forth a reasonable and feasible distribution of duties among several individuals and that the Air Force's determination that its program manager would not have adequate assistance thus is unfounded; a contract manager and assistant contract manager were assigned to be responsible for contract oversight and logistic support, and a contract foreman, on duty or on call at all times, was to be responsible for inspections and inventories. In fact, ICS states, four supervisory personnel were to be available at all times to respond to any contractual requirements.

Moreover, ICS contends that the Air Force failed to give proper consideration to many aspects of its proposed operation plan. ICS maintains that each supervisor's areas of responsibilities and duties were clearly set forth in its proposal, and that its quality assurance procedures, when read in conjunction with the supervisors' responsibilities and duties, clearly showed who was responsible

for implementing the preventive maintenance plan. ICS maintains that its materials cost control procedures were similarly sufficiently described in its proposal.

In reviewing protests against allegedly improper technical evaluations, our Office will not substitute its judgment for that of the contracting agency; rather we will examine the record to determine whether the agency's judgment was reasonable and in accord with the listed criteria, and whether there were any violations of procurement statutes or regulations. See ORI Inc., B-215775, Mar. 4, 1985, 85-1 CPD ¶ 266. We find the Air Force's evaluation of ICS' proposal was reasonable.

First, we do not share the protester's view that assignment of a contract manager, an assistant contract manager and a contract foreman to the performance of this contract automatically required the Air Force to conclude that the proposed project manager would not be overburdened. Notwithstanding the availability of these other personnel, the Air Force was concerned that too many performance areas were the immediate responsibility of the project manager; in addition to having general oversight responsibility over all aspects of contract performance, the project manager was to have job responsibility for supply and materials control, including the procedures for estimating the cost of each item of work, as well as for labor relations and identification of labor requirements. Compounding the agency's concern was ICS' failure to indicate some downward delegation of authority from the project manager to these individuals for many of these tasks. Given this organizational structure, which required the project manager to perform many complex, time consuming, and critical functions, let alone the absence of any clear plan for delegating these functions to others, we think the Air Force's concern with the project manager's ability to perform in an efficient and effective manner was warranted. Accordingly, we find that the Air Force's awarding ICS a marginal rating in the area of management was reasonable.

We also find nothing unreasonable in the Air Force's determination that ICS did not adequately define many areas of its proposed operation plan. We have examined ICS' proposal and find that, although it contained what could be considered sound quality assurance procedures, it nevertheless indeed appears to have lacked sufficient detail concerning implementation of these procedures and the actual day-to-day operations of the contract, particularly with respect to the daily work schedules of non-supervisory personnel and the daily role of management. In this regard, while the general duties and manning requirements for the

non-supervisory positions of operator, mechanic and inspector were set forth, ICS failed to provide proposed daily work schedules for these positions. ICS similarly did not define, by shift and location, the responsibilities of the supervisory personnel. Moreover, although ICS included a preventive maintenance plan as part of its quality assurance procedures, ICS did not identify those non-supervisory and supervisory personnel who would be responsible for implementation of each facet of this plan. Finally, ICS' cost control plan, while seemingly adequate in many respects, did not require the compilation of sufficient information to allow for an accounting of reimbursable costs incurred in connection with the purchase of materials needed for this procurement.

Although ICS maintains that its proposal, read as a whole, does adequately address all areas of the operation plan, this contention is based at least in some part on reading different sections of the proposal together; for instance, as indicated above, ICS believes it is clear from its quality assurance procedures, when read in conjunction with the supervisors' responsibilities, who was responsible for the preventative maintenance plan. Again, however, we have reviewed the proposal, and find no basis for questioning the Air Force's conclusion that the proposal in fact was not sufficiently clear in these areas. We note that offerors are responsible for preparing their proposals so as to clearly explain what is being offered. See RCA Service Co., et al., B-218191, et al., May 22, 1985, 85-1 CPD ¶ 585.

We conclude that the Air Force justifiably found that ICS' proposal lacked necessary details of its intended operation plan, and that this deficiency precluded a conclusive determination as to ICS' compliance with solicitation requirements; for example, absent documentation specifying ICS' intended daily assignment of proposed personnel, the Air Force could not reasonably ascertain whether ICS proposed adequate personnel to ensure satisfactory contract performance. Accordingly, we think the Air Force's awarding ICS a marginal rating for the operations evaluation factor was reasonable.

ICS also alleges that the composition of the evaluation panel precluded a fair evaluation of proposals. This allegation is purely speculative, however, and is based solely on ICS' unsubstantiated assertions that certain members of the panel had financial and other ties to CTI. We will not attribute bias to an evaluation panel member simply on the basis of inference or supposition. See D-K Assocs., Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396. While the record indicates that there were allegations of

conflicts on the part of members of the original evaluation team, the contracting officer replaced this team to ensure an impartial, fair evaluation. In any case, ICS' allegations concern the replacements, not the original panel. Again, ICS has presented no evidence of bias in the evaluation.

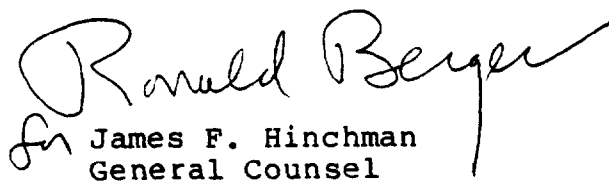
ICS finally questions CTI's responsibility, as a vendor, to perform the required maintenance services. Specifically, ICS contends that, in view of the ongoing FBI and AFOSI investigation of alleged wrongdoing by CTI under its predecessor contract, the Air Force could not reasonably find that CTI possessed the corporate integrity necessary to support an affirmative determination of responsibility in the absence of information resolving these allegations. Since the contracting officer apparently did not ask CTI to refute these allegations, ICS concludes that the Air Force's reversal of its initial finding that CTI was nonresponsible was unjustified.

Whether CTI is a responsible prospective contractor is a determination within the business judgment of the contracting agency. Prior to award, an agency is required to make an affirmative determination of the prospective awardee's responsibility, Federal Acquisition Regulation § 9.103(b), which we will not question absent a showing of fraud or bad faith. To make this showing, the protester has a heavy burden of proof, as contracting officials are presumed to act in good faith. Keyes Fibre Co., B-225509, Apr. 7, 1987, 87-1 CPD ¶ 383.

We find no showing of bad faith here. The Air Force initially found CTI nonresponsible on the basis of preliminary information disclosed by the FBI and AFOSI suggesting that CTI's performance under the prior contract was replete with improprieties, including the fraudulent overcharging of the government for rebuilt, rather than new, spare parts, and noncompliance with statutory wage rates. The record shows, however, that, following the Air Force's initial nonresponsibility determination, AFOSI failed to offer any evidence substantiating these allegations. The Air Force determined that without such documentation it had no basis to deny CTI the award on the basis that the firm had defrauded the government and had engaged in other improper activities in performing its prior contract. Moreover, while the Air Force was aware that the investigation of CTI was continuing, it believed that this fact alone also did not support a nonresponsibility determination on the basis of questionable integrity. We find that this conclusion was reached in good faith, see Krug Int'l, B-232291.2, Feb. 6, 1989, 89-1 CPD ¶ \_\_\_, and thus find no

basis to object to the affirmative determination of CTI's  
responsibility.

The protest is denied.

  
for James F. Hinchman  
General Counsel